IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MENDOCINO

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

VS.

RAYMOND LAWRENCE FRAZER,
Respondent.

CR24362

RULING ON MOTION TO REINSTATE COMPLAINT PURSUANT TO PC 871.5

This matter came on for hearing in this court March 11, 1997, on the prosecution's Motion to Reinstate the Complaint after the granting of a demurrer and dismissal in the Municipal Court. The prosecution's motion in this court is brought pursuant to the provisions of Penal Code Section 871.5.

Defendant was represented in this court by attorney William Rigsby and the People by Elizabeth Norman. The matter was submitted on the moving papers.

The facts are that the defendant, Raymond Lawrence Frazer, is charged with a violation of 288(a) of the Penal Code, lewd and lascivious acts with a minor under fourteen years, occurring between the 1st of October 1984 and the 31st of December 1984. Penal Code Section 800 articulates that the limitations period for this offense is 6 years, and jurisdiction would therefore have expired not later than January 1, 1991.

This motion was first brought by the defendant in the Municipal Court on December 17, 1996, and the matter was

taken under submission on January 7, 1997. The magistrate's decision is dated February 10, 1997.

Apparently, between the filing of the demurrer which asserts the statute of limitations as a defense, and the rendering of the magistrate's decision, an amendment of the statue [sic] took effect in the form of 803(3)(B), which is cited by the prosecution for the first time in their moving papers in this court. That section states:

> "Effective January 1, 1997, through June 30, 1997, this subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if either of the following occurs ..."

The ruling of the magistrate in granting the demurrer and dismissing the complaint was based on a statutory construction of Penal Code Section 803g which became effective on January 1, 1994. He concluded that under the generally accepted principles of statutory construction, absent a clear and express legislative intent that the statute be applied retroactively, it must be applied prospectively. In holding that the legislature failed to clearly articulate an intention that 803g be applied retroactively, the magistrate relied on cases that interpreted the statute before 803g(3)(B) took effect.

In ruling on the prosecution's motion brought pursuant to 871.5, this Court is limited to hearing and determining the motion on the basis of the record before the magistrate, and the only ground for the motion shall be whether, as a matter of law, the magistrate erroneously dismissed the action.

The answer is no, notwithstanding that it appears clear by the 803g(3)(B) amendment that the legislature has now clearly signaled its intention that 803g be applied retroactively. The dismissal by the magistrate was correct, but prospective statutory construction is no longer the issue. The issue now is

whether the clear legislative intent to revive causes of action already barred by statutes of limitation violates the ex post facto clauses of the United States and/or California Constitutions by changing the legal consequences of a defendant's past conduct.

The United States Supreme Court has provided a clear standard on this issue in *Collins vs. Youngblood*, (1990) 497 US 37, wherein the Court stated in part that a statute which deprives one charged with a crime of any defense available according to law at the time when the act was committed is prohibited as ex post facto.

The People argue here, as they did in *Lynch vs. Superior Court*, 33 CA4th 1223, that section 803g does not deprive a defendant of a right or defense "available at the time" the offense was allegedly committed. The Lynch Court expressly rejected that contention and held that a statute of limitation defense is fixed or defined as of the date of the offense, but its assertion is premature until the occurrence of a later contingency.

This reasoning is in line with well-settled law as articulattd in *Sobiek vs. Superior Court*, 28 CA3d 846, wherein the Court held that a criminal statute of limitations period in effect on the date of the alleged offense may lawfully be extended before, but not after, it has run as to the offense.

The application of Penal Code Section 803g as applied to this defendant is a violation of ex post facto provisions of the United States and/or California Constitutions. **The Motion To Reinstate The Complaint is denied**.

Dated: 3/27/97

HENRY K. NELSON
JUDGE OF THE SUPERIOR COURT

cc: DDA Elizabeth Norman
William Rigsby, Esq.